



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making**Agency:** Washington Department of Fish and Wildlife

- ☒ **Preproposal Statement of Inquiry** was filed as WSR 09-18-066; or
☐ **Expedited Rule Making--Proposed notice** was filed as WSR _____; or
☐ **Proposal is exempt under RCW 34.05.310(4).**

- ☒ **Original Notice**
☐ **Supplemental Notice to WSR** _____
☐ **Continuance of WSR** _____

Title of rule and other identifying information: (Describe Subject) WAC 220-52-050, Ocean pink shrimp trawl fishery – Coastal waters.**Hearing location(s):**

Natural Resources Building ~ First Floor, Room 172
1111 Washington St. SE
Olympia, Washington 98504

Date: January 8-9, 2010 **Time:** 8:45 a.m.**Submit written comments to:**

Name: Rules Coordinator
Address: 600 Capitol Way No., Olympia, WA 98501-1091

e-mail Lori.Preuss@dfw.wa.gov

fax (360) 902-2155 by (date) December 31, 2009

Assistance for persons with disabilities: ContactSusan Yeager by December 31, 2009

TTY (360) 902-2207 or (360) 902-2267

Date of intended adoption: On or after February 5, 2010
(Note: This is **NOT** the **effective** date)**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Department is proposing to require Washington licensed pink shrimp trawl fishers to carry, when requested, federal- or state-employed observers during commercial shrimp fishing trips.**Reasons supporting proposal:** The coastal shrimp trawl fishery takes but does not retain groundfish, which exempts it under federal rules from having to carry a federal observer when requested. Without observer coverage, information about bycatch cannot be collected. In data-poor situations, management must be more conservative to address the uncertainty than might otherwise be necessary had adequate information been available. This rule change proposal will include Washington licensed shrimp trawlers under the National Marine Fisheries Service West Coast Groundfish Observer Program.**Statutory authority for adoption:** 77.12.047**Statute being implemented:** 77.12.047**Is rule necessary because of a:**

Federal Law? ☐ Yes ☒ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No
If yes, CITATION:

DATE

November 18, 2009

NAME (type or print)

Lori Preuss

SIGNATURE**TITLE**

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 18, 2009**TIME:** 10:10 AM**WSR 09-23-117**

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) The Washington Department of Fish and Wildlife

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Lorna Wargo	1111 Washington Street, SE, Olympia, WA 98504	(360) 753-2600
Implementation	Jim Scott	1111 Washington Street, SE, Olympia, WA 98504	(360) 902-2651
Enforcement.....	Chief Bruce Bjork	1111 Washington Street, SE, Olympia, WA 98504	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☒ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☐ No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain: This proposal does not involve hydraulics.

Small Business Economic Impact Statement

1. Description of the reporting, record keeping, and other compliance requirements of the proposed rule.

The proposed rule will require Washington licensed commercial shrimp trawlers to participate in the National Marine Fisheries West Coast Groundfish Observer Program (Program). When requested by the Program, vessels will be required carry an observer for a specified number of fishing trips.

Vessels selected for observer coverage must report or provide advance notice of their intended departure date/time. This is accomplished through a telephone call. During any observed trip, a logbook will need to be maintained. Logbooks are provided at no cost to fishers.

Vessels in the Program must comply with federal regulations for the Program. These regulations include provisions for vessel safety, observer access to facilities, observer access to information, food and accommodations, access to communication equipment, and

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements.

None.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs.

Shrimp trawl vessels will incur additional costs for food to provide observers meals as required by federal regulations. Vessels must meet U.S. Coast Guard safety requirements to have observers onboard; some vessels may incur costs to correct deficiencies in meeting these standards.

4. Will compliance with the rule cause businesses to lose sales or revenue? No.

5. Cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules, using one or more of the following as a basis for comparing costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

- (a) The typical shrimp trawl vessel operates with a crew of three, including the skipper. The expected cost of compliance is estimated at \$25 per day as the vessel will be

expected to provide food for the observers. The typical vessel averages 16 days of fishing per month during a seven month fishing season. However, observers will be deployed on about fifty-percent of the trips. This equates to a daily cost per crew of about \$4.

Typical Number Days Per Season	112
Cost per Day	\$ 25
Cost per Season (x 56 days for 50% coverage)	\$1,400
Number of Crew	3
Daily Cost per Crew for Season	\$ 4

Now compare the largest businesses' cost of compliance with the cost of compliance for small businesses. Will this rule have a disproportionate impact on small businesses?

No. Essentially all the business affected would be considered small businesses.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so.

The Department will provide fishers with logbooks. Additional steps to reduce costs are not intended as these could compromise either the safety or comfort of the observers or hinder their ability to perform their duties.

7. A description of how the agency will involve small businesses in the development of the rule.

The Department will meet informally with industry participants, provide written materials through mailings and provide an opportunity for formal comment through the Washington Fish and Wildlife Commission public meetings.

8. A list of industries that will be required to comply with the rule.

Washington coastal shrimp trawl license holders

9. An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule. NA

AMENDATORY SECTION (Amending Order 03-30, filed 2/18/03, effective 3/21/03)

WAC 220-52-050 Ocean pink shrimp trawl fishery--Coastal waters. It is unlawful to fish for, possess or deliver ocean pink shrimp taken for commercial purposes from the waters of the Exclusive Economic Zone, except as provided for in this section:

Area

(1) ~~((Ocean pink shrimp fishery--~~
~~(a)))~~ It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

Season

(2) It is unlawful to fish for, take, or possess on board a fishing vessel, pink shrimp, except during the following time: The open season for trawl gear is April 1 through October 31 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

~~((b) The following gear is prohibited:))~~

Gear

(3) It is unlawful to fish with or possess pink shrimp taken with shrimp trawl gear having a net mesh size greater than two inches in the intermediate or codend, except for net mesh used in ~~((fish excluder devices--))~~ by-catch reduction devices defined under subsection (4) of this section. However, it is lawful to have net mesh larger than two inches in the wings or body of the trawl.

~~((c)))~~ (4) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved by-catch reduction device is used in each net. Approved by-catch reduction devices ~~((s))~~ include:

~~((i)))~~ (a) A Soft Panel By-catch Reduction Device, which uses a mesh panel to guide fish out of an escape hole. An approved soft-panel must meet the following criteria:

~~((A)))~~ (i) The panel must completely cover some portion of the net in cross-section, meaning it must extend completely across the full opening of the net in one continuous piece. The panel must be securely fastened to the net around the entire perimeter, such that a 110 mm diameter sphere cannot pass beyond the panel into the terminal end of the codend;

~~((B)))~~ (ii) The panel meshes must be constructed of netting material with individual meshes no larger than 5.5 inches, measured between opposing knots, and must be constructed of a single panel of continuous netting, without zippers or other devices designed to

allow disabling of the panel such that large fish can pass back into the codend;

~~((C))~~ (iii) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

~~((D))~~ (iv) The escape hole must be forward of the mesh panel and must begin within four meshes of the furthest aft point of attachment of the mesh panel to the net ~~((7))~~.

~~((ii))~~ (b) A Nordmore Grate By-catch Reduction Device, which uses a rigid panel of narrowly spaced vertical bars to guide fish out of an escape hole in front of the panel, generally in the top of the net. An approved Nordmore grate must meet the following criteria:

~~((A))~~ (i) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net, such that there is no space between the panel and the net that will allow a 110 mm sphere to pass beyond the panel, into the terminal area of the codend;

~~((B))~~ (ii) None of the openings between the vertical bars in the rigid panel may exceed two inches in width;

~~((C))~~ (iii) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

~~((D))~~ (iv) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

~~((d) All by-catch reduction devices and codends used for trawl fishing for pink shrimp must be readily accessible and made available for inspection at the request of an authorized agent of the state. No trawl gear may be removed))~~ (5) It is unlawful to remove trawl gear from the vessel prior to offloading of shrimp.

~~((e))~~ (6) It is unlawful to modify by-catch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except for the purpose of testing the by-catch reduction device to measure shrimp loss. Authorized testing of by-catch reduction devices must meet the following criteria:

~~((i))~~ (a) Testing is allowed by special permit only, consistent with the terms and conditions of the permit; and

~~((ii))~~ (b) For vessels fishing two nets simultaneously (double-rigged boats), only one net may contain a disabled by-catch reduction device, and the other net must be fishing a fully functional by-catch reduction device as described in ~~((e) of this))~~ subsection (4) of this section.

~~((f) Minimum number of shrimp per pound:))~~ (7) A violation of subsections (4) through (6) of this section is punishable under RCW 77.15.520, Commercial fishing--Unlawful gear or methods--Penalty.

(8) It is unlawful to land or deliver pink shrimp to an original receiver that exceeds the following count per pound restriction: The count per pound must average no more than 160 shrimp per pound for a minimum of two samples, increasing at a rate of one sample per one thousand pounds landed or in possession, up to a maximum requirement of twenty samples. Such samples shall consist ~~((s))~~ of at least one pound ~~((of))~~ each of whole, unbroken shrimp taken at random from throughout the individual load landed

or in possession. This landing restriction shall apply only to loads of 3,000 pounds of shrimp or more. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

Incidental catch

~~((g) Incidental catch-finfish:))~~ (9) It is unlawful to take salmon incidental to any shrimp trawl fishery.

(10) It is unlawful to retain any bottomfish species taken incidental to any shrimp trawl fishery, except as provided for in WAC 220-44-050.

~~((h) Incidental catch-shellfish:~~

~~(i) It is unlawful to retain any species of shellfish except that it is lawful to retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery, or octopus or squid.~~

~~(ii) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state.~~

~~(i))~~ (11) It is unlawful to retain any species of shellfish, except that it is permissible to:

(a) Retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery; and

(b) Retain octopus or squid.

(12) A violation of subsections (9) through (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

License

(13) An ocean pink shrimp delivery license is ~~((the license))~~ required to operate the gear provided for in this section, and it allows the operator to retain shrimp taken in the waters of the Exclusive Economic Zone.

~~((2) Fisheries for shrimp species other than ocean pink shrimp or ocean spot shrimp: Species other than ocean pink shrimp and ocean spot shrimp may only be taken incidentally to the ocean pink shrimp and ocean spot shrimp fisheries.))~~ A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license--Penalty.

Permit

(14) It is unlawful to fish for, retain, land, or deliver shrimp taken with trawl gear without a valid shrimp trawl fishery permit.

(15) It is unlawful to take, retain, land, or deliver any shrimp or groundfish taken with trawl gear without complying with all provisions of a shrimp trawl fishery permit.

(16) A violation of subsection (14) or (15) of this section is punishable under RCW 77.15.750.